

1
2 **UNITED STATES DISTRICT COURT**3 **DISTRICT OF NEVADA**

4 Mariano Madrid,

Case No.: 2:19-cv-01659-APG-NJK

5 Petitioner

ORDER

6 v.

7 William Hutchings, et al.,

8 Respondents
9


10 Petitioner Madrid's appeal of my September 7, 2022, judgment denying his habeas
11 petition has been remanded to this court for the limited purpose of ruling on Madrid's October
12 20, 2022, motion to reopen the time for appeal. ECF No. 59. As recounted in the remand order,
13 Madrid alleges he did not receive notice from the court that judgment had been entered and "that
14 his family helped him obtain a copy of the district court's order," which he did not receive until
15 October 13, 2022. *Id.*

16 Under Federal Rules of Appellate Procedure, the court may reopen the time for appeal if
17 "the court finds that the moving party did not receive notice under Federal Rule of Civil
18 Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after
19 entry." Fed. R. App. P. 4(a)(6). "Where a moving party makes an unchallenged assertion that he
20 did not receive timely notice of judgment, and the other Rule 4(a)(6) conditions are not at issue,
21 a district court errs in denying the motion to reopen based solely on the party's failure to learn
22 independently of the entry of judgment." *United States v. Withers*, 638 F.3d 1055, 1061–62 (9th
23 Cir. 2011).

1 I have no reason to question the veracity of Madrid's claim. I also note Madrid has
2 generally complied with my deadlines in litigating this case. In the interest of fairness, however,
3 I will provide the respondents an opportunity to oppose Madrid's motion to reopen.

4 I THEREFORE ORDER that I will grant Madrid's motion to reopen (ECF Nos. 57/59)
5 unless the respondents file an opposition within 10 days of the date of this order. If respondents
6 file a timely opposition, I will allow 10 days for Madrid to file a reply before ruling on the
7 motion.

8 Dated: December 12, 2022

9 
10 U.S. District Judge Andrew P. Gordon